IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2082 of 2001

with

SPECIAL CIVIL APPLICATION No 2083 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PRABHASHANKAR NARANBHAI

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 2082 of 2001
MR AJ SHASTRI for Petitioners
MR MUKESH PATEL, AGP,for Respondent No. 1, 2

2. Special Civil ApplicationNo 2083 of 2001
MR AJ SHASTRI for Petitioners
MR MUKESH PATEL, AGP, for respondents.

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CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

By this two petitions, under Article 226 of the Constitution of India, the challenge is against the order of respondent No.2 in Land Reference Case No.39/89, whereby, the petitioners application for reference to the District Court, Junagadh, under section 18(1) of the Land Acquisition Act, 1894 (Act, for short), came to be rejected, on 9.1.2001 on the ground that there was delay in making such applications for reference to the District Court against the offer/award of the Land Acquisition Officer in respect of the acquired land.

After having given our anxious thoughts to the facts and circumstances emerging from the record of this group of two petitions and the submissions, coupled with the relevant proposition of law, we have been convinced that the impugned order of respondent No.2, Deputy Collector and Land Acquisition and Rehabilitation Officer (Irrigation), Junagadh is unjust, unreasonable and erroneous and is required to be quashed.

The petitioners were the owners of land bearing survey No.40 situated in the sim of village Bela, in Junagadh district, which came to be acquired by the respondent authority, for the purpose of irrigation. The Land Acquisition Officer, passed award on 4.1.96. The petitioners preferred application under section 18(1) of the Act on 10.9.96 for the purpose of making reference to the District Court, Junagadh, which came to be rejected by respondent No.2 on the premise that application under section 18(1) of the Act was not made within the period of limitation and that the petitioners had received the amount of compensation offered by the Land Acquisition Officer without any objection. It is, also, stated in the impugned order of the respondent No.2 that after award dated 4.1.96 was passed, the petitioners, original claimants were served with notice under section 12(2) of the Act and the notice was served on 13.3.96 and since the application under section 18(1) came to be made on 10.9.96, it is beyond the period of limitation. Therefore, the joint reference application of the petitioners came to be rejected by the order dated 9.1.2001, which is under challenge in this group of two

petitions under Article 226 of the Constitution of India.

At the time of admission, the original record was called for by this Court. After examining the original record this group of two petitions was admitted and was fixed for final hearing. The extract of the service of notice under section 12(2) purported to have been served to the petitioners, also, is placed on record by the respondent authority along with the affidavit in reply of one Deputy Collector, Mr. K.B.Thakkar, respondent No.2. We have been, also, taken through the entire documentary evidence, in course of submissions before us. We have, also, examined the affidavit-in-rejoinder of the petitioners.

The petitioners have, specifically, stated in the petition that notices under section 12(2) of the Act have not been served upon them. This submission is noticed to be justified from the record. It appears from the record that notices under section 12(2) of the Act have not been served upon all the petitioners.

The second contention of the petitioners is that the impugned order came to be recorded by respondent No.2, Deputy Collector, Mr.Thakkar, whereas, hearing was made at the time when the predecessor of Mr.Thakkar, one Mr.Sampath, was working as Deputy Collector and Land Acquisition Officer. The submission is, also, vehemently raised before us on behalf of the petitioners, to which the learned AGP stated that it is a matter of verification of record. However, it would be interesting to note, at this stage, that the specific averments made in para 11 of the petition, in this behalf, have not been, specifically, controverted by a affidavit in reply filed by respondent No.2. Again, in the affidavit in rejoinder, this aspect is, specifically, raised.

After having taken into consideration the aforesaid facts and the circumstances emerging from the record of the present case and the submissions and in the light of the relevant proposition of law, we are of the clear opinion that the impugned order of respondent No.1 is not only erroneous, unjust, but is illegal. From the facts and circumstances, it is, successfully, pointed out that the notice under section 12(2) of the Act had not been served on all the petitioners and the Deputy Collector and Land Acquisition Officer who heard the arguments and objections about the referability on the ground of delay has not passed the impugned order. The contention raised on behalf of the respondent authority that notices under section 12(2) of the Act had been served through the

Sarpanch or the Talati, is not supported by any affidavit of the Sarpanch or the Talati for the reasons not known to us. Many references are pending before the reference Court i.e. District Court at Junagadh in connection with the same notification, as pointed out by the learned advocate for the petitioners. But, in our opinion, this ground is not germane to the issue about delay. Be that as it may. In our opinion, the impugned order in both the petitions recorded by respondent No.2 being illegal, requires to be quashed and set aside. Obviously, therefore, direction for reference under section 18(2) of the Act must follow.

Consequently, while allowing both the petitions, and quashing and setting aside the impugned order passed by respondent No.2, in this group of two petitions, respondent authorities are directed to make reference as provided in section 18(2) of the Act. Accordingly, both the petitions shall stand allowed with costs. Rule is made absolute accordingly.

(J.N.Bhatt, J.)

(Akshay H. Mehta, J.)
(vjn)